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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Kelso Enterprises Limited and Pacific Fruit Limited,

Plaintiffs,

08 Civ. 8226 (SAS)

-against-

**PLAINTIFFS' INITIAL
DISCLOSURE PURSUANT
TO RULE 26(a)(1)**

M/V DIADEMA, her engines, boilers, etc., M/V
ROTTERDAM, her engines, boilers, etc., M/V
MARYSTOWN, her engines, boilers, etc., *in rem*, A.P.
Moller – Maersk A/S, Maersk Line, Maersk del
Ecuador C.A., CW Schiffahrts GmbH & Co KG, JMS
Schiffahrtsges mbH & Co KG ms 'Antares J', Seaspan
Corp., *in personam*,

Defendants.

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Plaintiffs Kelso Enterprises Limited and Pacific Fruit Limited, by their undersigned attorneys, state as follows for their Initial Disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure:

I.

The following persons likely have discoverable information relating to the condition of the subject cargo at loading and/or discharge, and the quantum of damages to the cargo, including efforts to mitigate the losses:

1. Ricardo Chiriboga
Quality Manager
Pacific Fruit Limited
Toranomom 1 – Chome Mori Bldg. 7th Floor
1-19-5 Toranomom, Minato-KU
Tokyo, Japan 105-0001
2. Malena Lopez
Maersk Line
Maersk del Ecuador C.A
Av. Juan Tanca Marengo, Km 1.8
Conauto Bldg. 3rd floor.
Guayaquil - Ecuador
Tel: +593 4 2682531
3. Quality Control Representative
Exportadora Bananera Noboa S.A.
101 El Oro y La Ria
Guayaquil, Ecuador
4. Crones & Co., Ltd.
273 Yamashita-Cho
Naka-Ku, Yokohama
231-0023 Japan
5. The Captain, Chief Officer, Reefer Engineer and/or other officers of the defendant vessels.

II.

Plaintiffs may use the following documents or categories of documents and things to support their defenses:

1. Bills of Lading; provided to defendants' counsel on December 4, 2008.
2. Fixture Letter dated 15 January 2007; provided to defendants' counsel on January 22, 2009.
3. Crones & Co., Ltd. invoice and report dated 14 November 2007; provided to defendants' counsel on December 4, 2008.
4. Customer invoices for fruit dumped in Japan or sold at a loss in China or Japan; documents located in Tokyo, Japan.

5. Invoices for stevedoring and dumping costs; documents located in Tokyo, Japan.
6. Documents of the shipper showing good order and condition of the subject cargo at delivery to carrier in Ecuador.

III.

A computation of each category of damages claimed by plaintiffs is annexed hereto as Appendix A.

Dated: New York, New York
February 27, 2009

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Kelso Enterprises Limited and Pacific Fruit Limited

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APPENDIX A**I. LOSS FOR DAMAGED FRUIT DUMPED IN JAPAN**

A. Total of 1,996 boxes dumped

1. Morado		
403 boxes @ \$13.68 / box (SMV)	\$5,511.00	
2. Orito		
1,493 boxes @ \$11.54 / box (SMV)	17,227.00	
3. Enano CP		
100 boxes @ \$11.54 / box (SMV)	<u>1,154.00</u>	
		\$23,892.00

B. Additional Costs

1. Dumping	\$4,222.00	
2. Survey	936.00	
3. Extra Handling	<u>3,369.00</u>	
		<u>8,527.00</u>

Total A + B \$32,419.00

II. LOSS FOR DAMAGED FRUIT SOLD IN JAPAN

Total of 8,321 boxes sold at reduced price

1. Bonita		
5,324 boxes @ loss of \$1.71 / box	\$9,104.00	
2. Sanito		
1,097 boxes @ loss of \$0.43 / box	472.00	
3. Enano CP		
1,900 boxes @ loss of \$0.43 / box	<u>817.00</u>	
		\$10,393.00

III. LOSS FOR DAMAGED FRUIT SOLD IN CHINA

Total of 44,905 boxes sold at a loss in China

1. Bonita (SMV 12.82 in Japan)	
43,326 boxes @ loss of \$8.57 / box	\$371,304.00
2. Sanito (SMV 12.82 in Japan)	
1,579 boxes @ loss of \$8.57 / box	<u>13,532.00</u>

\$384,859.00

LOSS (I, II & III)*

\$427,671.00

* Subject to Revision. Plus interest, costs, and attorney's fees.

All calculations based on exchange rate of 1 U.S. Dollar to 117 Japanese Yen.